

United States District Court Southern District of Texas

Case Number: H-04-2387

ATTACHMENT

Description:

☐ State Court Record ☐ State Court Record Continued

☐ Administrative Record

☐ Document continued - Part IV of IV

☒ Exhibit(s) number(s) / letter(s) # 102

Other: Pliff's First Amended Petition
Habeas Corpus

18 closely monitor what's happening to be sure if there is another
19 example of protection needing not being fulfilled, that that
20 case would immediately be brought back for reconsideration of
21 UCC. The absence of classification counselors carrying out
22 those kinds of functions is probably the greatest reason why as
23 many inmates are being harmed in the Texas system.
24 I have to make an aside, though. I don't want it
25 thought that the UCC never recognizes that an inmate needs some

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1 kind of protection. And the thing that's most upsetting, I
2 think, to me in this regard is that I found a number of cases
3 where UCC said, This case needs safekeeping. That has to go up,
4 then, to Huntsville, where the state classification committee
5 makes the decision, and it's turned down.

6 And I suppose there's some reason occasionally why
7 that might occur. But it's very difficult for me to understand
8 how a decision made by the people that are responsible for the
9 day-to-day operation, responsible for that institution and those
10 prisoners, should be overruled by a central classification that
11 knows nothing more about the case than what's written down on a
12 few pieces of paper.

13 Q. Are there staffing or staff deployment issues that play a
14 role in the victimization that happens in TDCJ?

15 A. Which kind?

16 Q. Either level of staffing or the deployment of staffing?

17 A. Beyond classification counselors now, you're asking the

18 question?

19 Q. Yes. For example, where -- did you make observations about

20 where victimization took place?

21 A. I have looked and feel somewhat uncomfortable about

22 responding to that question, because I did not do a staffing

23 analysis. I would like to have done a staffing analysis if

24 there had been time to carry this out just so that I would have,

25 as some people keep requesting, more scientific data to share.

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1 Q. How long does it take to do a staffing analysis in an
2 institution of the size that you were visiting in TDCJ?

3 A. You could not do an adequate staffing analysis of a
4 2500-bed institution in less -- in less than a week. That's one
5 institution. And that would probably take two people to even do
6 that. I participated in the staffing analysis of all the Texas
7 prisons during the Ruiz case, and I brought in two top level
8 people, and it took us a month to do it, and there was just a
9 handful of facilities compared to what there is now.

10 But to go further, I can observe that the staff that
11 are there now, either because there seems to be in some
12 facilities a high vacancy rate, or whether staff have been
13 reassigned to other functions than their post assignment, or
14 whether staff just aren't doing what their post assignment calls
15 for.

16 For instance, during the heat of summer in
17 administrative segregation units, I found all of the

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18 correctional officers gathered in the one place that was air
19 conditioned, which was a control office in bull pen, where their
20 post assignment called for them to be in each of the wings.

21 So I'd have to state, in answer to your question, that
22 I cannot answer whether there are sufficient officers. I can
23 state my opinion that I did not find the officer coverage
24 satisfactory to be able to observe those areas in which attacks,
25 assaults occurred, which doors were being popped, et cetera.

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1 Q. Did it seem that correctional officers were able to perform
2 a function that you said a classification counselor might be
3 able to perform in terms of keeping an eye on an inmate who had
4 reported a problem who had not yet been moved and following up
5 on any signs of further problem?

6 A. This is one place where, particularly early in my movement
7 around, just chatting with correctional officers informally, I'd
8 say, Do you see your role as sort of being sure that somebody
9 gets to the hospital if he needs to, et cetera? And the reply
10 always was, That's really not my job. My job is to control the
11 wing. My job is to feed out meals. My job is to supervise.
12 That's somebody else's job.

13 When I asked the question, Whose job is that? There
14 always seemed to be a sort of shaking of the head and not really
15 sure. Maybe -- maybe it would be the major. But I saw little
16 times when the major was doing any of that.

17 Q. Did you find -- do you have some examples of individual

18 prisoners whose safety needs were in no way adequately addressed

19 but might help us understand the situation better?

20 A. Yes. The first case I would like to share with you is

21 660820. This is a first-timer and all groups pressured him as

22 soon as he came into the unit. He was raped three different

23 times on medium and once on close. He asked the psychologist if

24 he couldn't help him, and the psychologist told him that there

25 wasn't anything he could do about security issues. UCC

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1 recommended safekeeping, and the case went up to the state and
2 it was denied.

3 He refused housing as a method of addressing this
4 problem. He was put in handcuffs and dragged into the cell,
5 left there, and was raped that night by his cellie.

6 The next case is 766958. This is an 18-year-old when
7 he arrived in prison, got lots of pressure from the Gang 8. In
8 September '97 he was badly beaten by the Gang 8 and he reported
9 this to the sergeant. The sergeant did nothing. He requested
10 protection and nothing occurred. UCC wouldn't transfer him.

11 January 1998 he was again assaulted, a concussion,
12 broken jaw, was again denied by UCC for protection. After that,
13 two inmates came into his cell and beat him. When I saw him 11
14 days later, he had two black eyes, blood clots in his right eye,
15 a nose that was swollen across his face. I can only say that he
16 looked terrible, and yet he did not get safekeeping.

17 Q. In those two cases, would you say that the prison officials

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18 at the institutions where the inmates were housed had sufficient
19 information from which the conclusion -- there was no other
20 conclusion but that the inmate required some kind of protection?
21 A. There's no question that even if you didn't get the names
22 and numbers of who the assailants were, but both of these cases
23 they did, they were given up, the fact that a person could get
24 as badly beaten and not recognize that this individual needs
25 protection is just not justified.

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1 Q. Did you actually meet with these individuals?

2 A. Yes. I met with everyone that I'm speaking to you about.

3 Q. And the two individuals you've been talking about, are

4 those Mr. Mathis and Inmate FF?

5 A. Are they --

6 Q. The inmates that you're speaking of, are they --

7 A. The first case was Mathis; the second case, Inmate FF.

8 Q. I asked about those inmates in particular because they have

9 also actually testified in court.

10 A. I would only say, Counsel, for the record, that I didn't

11 know that they were going to testify. I wouldn't have included

12 them only because I would have just as many other cases as I'm

13 sharing with you. But --

14 Q. Well, these are people that we have had an opportunity to

15 see. Would you say that in seeing them and talking to them that

16 added to the obviousness that they were the type of people who

17 were the -- were people who naturally could be victimized in

18 prison?

19 A. I think in both of those cases there isn't any question

20 that it wouldn't take a very good observer and a very good

21 interrogator to find out that this is somebody who has a

22 vulnerable background and requires a great deal of protection.

23 But it's the repetitiveness of it that really speaks to the fact

24 that protection is not being provided.

25 Q. Well, was part of what was repetitive in your observations

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1 that the people who you talked to who had been victimized were
2 also the sort of people who just looking at them looked like
3 victims?

4 A. I'm, again, sorry. I'm not certain I understand really
5 what you're asking.

6 Q. Let's go on to another example.

7 A. Okay. The next one is Mark Jimenez, 834073. He was 18
8 years old when he came into prison. He's five-foot-seven
9 inches, weighs 135 pounds. He was recognized as being
10 protective custody needing when he was in jail, San Antonio.
11 That was because he had a background in a very small gang in
12 that area and the Gang 7 had put a hit on him. When he came to
13 the state jail, Dominguez, protective custody was ignored.
14 There were four requests to classification for protective
15 custody, all were denied. He asked to be interviewed by the
16 lieutenant and the lieutenant told him he couldn't help him
17 until he was hurt. He refused to join the Gang 7, which they

18 were asking him to do or pay off, and so on September 14th he
19 was very badly beaten. Even after that, the UCC refused
20 protection.

21 On September 18th, a life endangerment was denied. On
22 September 25th a life endangerment was denied. On October 20th,
23 a life endangerment was denied. On September 20th he was
24 assaulted by two inmates. He was punched, kicked. They had a
25 can in a sock and they beat him over the head. He had a

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1 puncture wound, lacerations, his eyes were swollen and black and
2 he had nine stitches to his chin and lip.

3 Following that on September 25th, and I had already
4 mentioned that the life endangerment was again denied and he was
5 returned to general population.

6 On October 24th -- on 20th he was again denied a life
7 endangerment. He was to remain in GP. On November 10th he was
8 again assaulted by Gang 7.

9 Next case is Jeffrey Johnson, 630140. He was first
10 raped in prison in 1993 in the Robertson Unit. Every time he
11 went to commissary, the Gang 4 took his purchases. The gang
12 even got to his parents. His mother was sending money in to the
13 gang members. He was transferred to Ramsey, placed on PC, or
14 safekeeping.

15 Six months later he was transferred to Eastham.
16 There's no reason in the file why, but he was taken off
17 safekeeping. Three weeks after that, he was beaten, raped, and

18 forced to participate in oral copulation.

19 So, finally, after denials of grievances, denials of
20 life endangerment, he decided to refuse housing, refuse
21 showering, refused to cut his hair, and he was locked down in
22 close custody in 30-day increments for 18 months.

23 He was transferred frequently. In June of 1996 he
24 arrived in Allred. The Gang 4 knew about him because the word
25 passed rapidly. He told classification, filed emergency

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1 grievances, life endangerment. All the requests were denied
2 because of insufficient evidence. So he was again beaten and
3 raped. And the attackers at the time of my interviews were
4 still on the unit. The UCC denied him. The grievances denied
5 him.

6 On 8-31, 8-32 (sic) August -- the end of August, first
7 of September, the Gang 4 beat him badly, forced him again into
8 oral copulation. He filed life endangerment again. The
9 lieutenant on duty called the ones who had beat him and he
10 together. The attacker denied it. So they're all returned to
11 their unit. He was beaten again that night.

12 I could go on with case after case that are exactly
13 similar to this, but I would like to conclude unless you want
14 more --

15 Q. Let's do one more.

16 A. One more case? This is well-known to some. His name is
17 Hulin, H-U-L-I-N, 721364. Mentally ill by diagnosis of

18 qualified medical practitioners. A 17-year-old boy who
19 described himself in a letter he wrote as small, skinny, who had
20 been sexually and physically attacked several times. He
21 reported all of these incidents. And in his letter he said, I
22 may die any minute. Please, sir, help me.

23 On 12-18, protective custody was denied. On 1-16, UCC
24 denied. On 1-16, he filed a grievance and a request for
25 protection. It was denied. On 1-19-96 another grievance for

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1 protective custody. Denied with the response, Does not meet
2 emergency grievance criteria. On 1-26-96, he hung himself,
3 became a vegetable and died May 10th.

4 It's our obligation to do everything within our power
5 to prevent these tragic occurrences. There is not a great
6 number of Hulin cases, but the cases I have cited and the dozens
7 and dozens of others that I reviewed are potential Rodney Hulins
8 if we don't give them some feeling of safety.

9 Q. In TDCJ, as you have observed it to be in 1998 during the
10 course of your tours, what kind of risk of harm are vulnerable
11 prisoners at? Looking at the system as it is the last time you
12 were there, which was late 1998, how safe are the vulnerable
13 prisoners in TDCJ?

14 A. Well, I think that the examples I have cited and the
15 problems that I have cited at that time had not been addressed,
16 and that I saw and in my opinion, from having visited 18 units
17 and having spent a great deal of time in each one of them, that

18 the greatest concern I have has to do with the victims, the
19 vulnerables, the people that needed adequate protection and were
20 not receiving it then.

21 Q. As of the last time that you were in TDCJ in 1998, was TDCJ
22 implementing any measures that were a correctionally reasonable
23 response to the problem that was persisting in the system with
24 the vulnerable prisoners?

25 A. I've heard that there have been some things done to address

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1 some of these issues, but I can only respond that at the time
2 that I made my last visit none of these changes, if they have
3 occurred, had been brought to my attention.

4 Q. What makes you think that the victims that you found in
5 TDCJ represented a systemwide problem rather than one or two or
6 five people following -- falling between some cracks?

7 A. Because it is occurring throughout the system, would be the
8 first response to that question, and occurring in sufficient
9 numbers so that it doesn't become just the anecdotal defense
10 that often is taken. Well, I have given a horrible example as
11 anecdotal, it ceases being anecdotal when there are sufficient
12 numbers and when they are pouring across the system.

13 Now, I want to state that there was one unit and one
14 jail that I visited where there was far less harm, far less
15 safety issues occurring and far less use of excessive force,
16 which tells me two things. One is that with leadership, with a
17 constant effort to address these problems, you can improve what

18 is occurring throughout the system. Secondly, though, I would
19 have to emphasize that even in those two facilities I found
20 examples similar to what I have shared with you today.

21 Q. Which two facilities were those?

22 A. Allred Unit and Dominguez Jail.

23 THE COURT: And what was the last one?

24 THE WITNESS: Pardon?

25 THE COURT: What was the last one?

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1 BY MS. BRORBY:

2 Q. The judge is asking what the second one was.

3 THE COURT: The last unit that you mentioned, what was
4 it?

5 THE WITNESS: Allred.

6 THE COURT: Allred.

7 THE WITNESS: And Dominguez Jail, Your Honor.

8 THE COURT: Thank you.

9 BY MS. BRORBY:

10 Q. Mr. Breed, I'm not going to ask you to give lengthy
11 testimony about your observations in administrative segregation
12 because some time has been spent on that topic in the testimony
13 of other witnesses, but I would ask you to describe briefly
14 what -- the work that you did in looking at administrative
15 segregation in TDCJ and your observations about conditions in
16 those units.

17 A. I not just visited, but I spent a great deal of time in

18 every administrative segregation unit. In effect, there was one
19 in every unit. I think the Dominguez Jail would probably argue
20 that they don't have administrative segregation, but they do
21 have a unit where they have a number of high security inmates
22 placed, and they use it in that regard.

23 Administrative segregation to begin with, and I have
24 to express my strong feelings in this matter, is a place where
25 you put inmates who have demonstrated by their behavior that

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1 they are serious security risks and have a high potential for
2 violence. And they have demonstrated that sufficiently that you
3 remove them from general population and put them in a very
4 secure kind of environment.

5 If you visit administrative segregation units around
6 the country, however, there is a great effort within the bounds
7 of security and control to also provide as much programming
8 which hopefully will change attitudes and behavior of those that
9 are there.

10 I found a void, an absence of any kind of programming
11 whatsoever in the administrative segregation units. I found a
12 system of levels that I don't believe exists anyplace in the
13 country today, certainly not that I know of.

14 Q. How do you mean that it's different from all other
15 administrative segregations you know in the country?

16 A. Well, when you come into administrative segregation in any
17 other state, you come in and you are entitled to whatever

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18 program opportunities there are there. You lose those only as
19 it can be justified because of your misbehavior in the ad seg
20 unit itself. That's the first thing you look at in terms of
21 coming into Texas. With the three level systems, almost all, 95
22 percent of those coming into administrative segregation go in
23 the bottom level, which means you don't get anything except
24 three meals a day and your medical care, and that's the extent
25 of it.

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1 Q. Well, tooth --

2 THE REPORTER: I'm sorry? I didn't understand you.

3 BY MS. BRORBY:

4 Q. The state-issue tooth powder and state-issue soap in Level

5 3?

6 A. Yes. You can't have any of your own toiletries or anything

7 of that nature. But, see, the problem is, you have already

8 taken everything away from the newcomer. You haven't got

9 anything to take away from him because you have taken all of

10 that away. And that's true basically at Level 3 and Level 2,

11 and it isn't until you get up to Level 1 that you're able to get

12 a few things from commissary, but you still aren't going to get

13 any programming. It doesn't make any difference what your

14 educational needs or anything else, even though it could be cell

15 operated, you don't get it.

16 But let's go back to Level 3 where the inmate who

17 comes in finds himself. Now, if a person has misbehaved when he

18 comes into ad seg and needs to go into solitary, I'm not a
19 bleeding heart liberal that says you shouldn't use solitary.
20 That's what you probably should do. Or whatever other
21 discipline you would do with any other inmate that misbehaved.
22 But in Level 3 administrative seg you've taken
23 everything away so there isn't any really to lose. The only
24 thing you're holding out, and I debated this frequently with
25 folks in ad seg units in Texas, is they said, Well, the hope of

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1 getting something better if you get out. So the problem is
2 twofold. If you're going to start out with an attitude that, I
3 don't have anything and I'm going to have to stay in this kind
4 of condition for months - in many cases it's months and months
5 and months and months - to heck with it, I'm at the bottom of
6 the barrel and I might just as well cuss people out and throw
7 things at them and do anything else. Well, they haven't got
8 anything else left then to even punish them, discipline them or
9 anything else.

10 I think that what they're doing to people when you put
11 them in administrative segregation before they have even broken
12 a rule has absolutely no correctional justification whatsoever.
13 There's no reason. For instance, females put in Level 3 ad seg
14 can't take their deodorant in with them, which I think really
15 ought to be a problem for the staff.

16 Q. That's true for males, too, isn't it?

17 A. Yes, but I think it's even more important that a woman at

18 least be allowed to have deodorant.

19 Q. That sounds like a sexism appropriate to your generation.

20 A. Something which I fully accept with my age. But I use it,

21 though, more as an example of the foolishness of trying to take

22 away something when you really don't have anything more to take

23 away, so you take away those things which really legitimately

24 people ought to have.

25 I found in ad seg no effort whatsoever to try to be of

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1 any help to inmates in terms of their improving themselves. In
2 ad seg, 50 percent of the people and more that are in it are in
3 there because they are gang members and have been identified as
4 gang leaders. I won't even get into a discussion of whether
5 that's a valid decision or not. But if a person is put in ad
6 seg because he has a gang identification of some kind, stays
7 there for four, five, seven years, one that I interviewed there,
8 with clean records, still doesn't know how to read and write and
9 wants to have some kind of help in that area and it's refused
10 because there is a rule against educational programs in ad seg,
11 I say that the program is serving no useful purpose.

12 The last thing, though, that I really want to share
13 with you, Texas has a very firm procedure that you don't get
14 into ad seg without central approval and you don't get out of
15 seg without central approval. And I have mixed feelings about
16 that, but I would say on the whole it gives it sort of control.
17 Somebody is looking pretty carefully about both in and out,

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18 although I would say the out part out to be totally an
19 institution decision.

20 But once in ad seg, whether you're in Level 3, 2, or
21 1, is totally left up to the correctional family. That's the
22 correctional officers, basically. Because although the warden
23 is on the ad seg classification committee, he appoints as his
24 designee the captain in charge of the ad seg unit.

25 Q. What's the problem with that?

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1 A. The problem --

2 THE COURT: Well, before we get into that, let's have
3 a recess. The Court will be in recess for 15 minutes.

4 (Recess at 2:30 p.m., until 2:45 p.m.)

5 THE COURT: Please continue with your direct
6 examination.

7 MS. BRORBY: Thank you, Your Honor.

8 CONTINUED DIRECT EXAMINATION

9 BY MS. BRORBY:

10 Q. Mr. Breed, when we took a break, you were telling us
11 something about the administrative segregation committee, its
12 composition. And I think my last question was, what problem do
13 you see with a committee comprised of ranking supervisors and
14 correctional officers in administrative segregation making the
15 decisions that they make?

16 A. First, you've got to understand that ad seg within the
17 typical Texas Department of Corrections unit system is a world

18 almost unto itself. Once the inmate is placed in there, what
19 happens to him within that unit in terms of discipline, what
20 happens to him in terms of any kind of additional privileges
21 which the level system speaks to is controlled by correctional
22 officers and usually a captain or a lieutenant. The captain or
23 lieutenant supports their correctional officers.

24 Correctional officers have a tremendous weapon. If,
25 for whatever reason, they're unhappy with an inmate, they can

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